

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

**RECEIVED**

JUN 23 2003

Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
FAMILY BROADCASTING, INC. )  
 )  
Order to Show Cause Why the Licenses )  
for Stations WSTX(AM) and WSTX-FM, )  
Christiansted, U.S. Virgin Islands, )  
Should Not Be Revoked )

EB Docket No. 01-39

To: The Honorable Richard L. Sippel,  
Chief Administrative Law Judge

**STATUS REPORT**

Family Broadcasting, Inc. ("Family"), by its counsel and in response to the Presiding Judge's Order (FCC 03M-22) released June 18, 2003 (the "Order"), hereby submits a Status Report concerning the pending application (the "Application") for assignment of licenses of Stations WSTX(AM) and WSTX-FM, Christiansted, Virgin Islands (the "Stations") from Family to Caledonia Communication Corporation ("Caledonia") (File Nos. BAL-20030304AAX, BALH-20030304AAW). Specifically, the Order directed the parties to set forth in the Status Report: (1) the status and prospects for favorable action on the Family/Caledonia assignment; (2) reasons why there should not be a hearing date reset; or (3) suggested dates for resetting a hearing in this case.

**(1) Status and Prospects for Favorable Action on Assignment Application**

As the Presiding Judge is aware, a Petition to Deny was filed against the Application by Robert Hoffman on April 18, 2003. In addition, an Informal Objection to the Application was filed by Joseph Bahr on April 14, 2003. The pleading cycles for both protests have

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closed<sup>1</sup>. While Family is optimistic that the Media Bureau will grant the Application, Family cannot provide the Presiding Judge with any further information regarding the prospects for favorable action or the timing thereof since the Media Bureau is solely responsible for the disposition of this matter.

## **(2) Reasons Why A Hearing Date Should Not Be Reset**

Preliminarily, the Presiding Judge should know that the Commission's new media ownership rules are involved in the processing of the Application because two of Caledonia's shareholders have attributable interests in other radio broadcast stations in the Virgin Islands market. Thus, as required by the FCC Form 314 application, Caledonia provided a multiple ownership showing in the Application, demonstrating its compliance with the Commission's local radio ownership rule (§73.3555(a) of the Rules).

However, it appears that the Media Bureau is temporarily unable to further process the Application due to the Commission's action of June 2, 2003, adopting the *Report and Order* in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317 and 00-244 (the "*June 2 Order*"), and the processing guidelines for pending broadcast assignment and transfer applications adopted therein. *See FCC News Release*, "FCC Sets Limits on Media Concentration" dated June 2, 2003, relevant excerpts of which are attached hereto; Media Bureau Public Notice DA 03-1877, "Processing Guidelines for Broadcast Station Applications", released June 2, 2003, a copy of which is attached hereto.

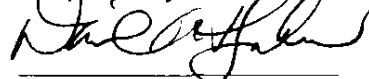
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<sup>1</sup> On May 6, 2003, Caledonia filed an Opposition to Petition to Deny ("Opposition"). A supporting letter filed on behalf of Family was included with Caledonia's Opposition. The Petitioner filed a Reply on May 16, 2003. On May 13, 2003, Caledonia filed a letter reply to the Informal Objection and, to counsel's knowledge, no further filing was made by the informal objector. Caledonia filed a Supplement to its Opposition on May 30, 2003. On June 2, 2003, Caledonia also filed an amendment to the Application per the request of the Media Bureau. To Family's knowledge, no further pleadings have been filed by either protester. Should the Presiding Judge desire copies of any of the referenced filings, they will be provided upon request.

With respect to pending broadcast assignment applications, such as the Application, the Media Bureau's Public Notice states that parties to such applications may amend their multiple ownership showings to demonstrate compliance with the modified multiple ownership rules, and that such amendments may not be filed until "notice has been published by the Commission in the Federal Register that OMB has approved the information collection requirements contained in such amendments." Caledonia has advised Family that it contemplates timely filing the requisite amendment to demonstrate its compliance with the revised multiple ownership rules. However, as of today, the requisite notice has not yet been published determining when such amendments can be filed. In short, the Application likely cannot be further processed until such time as Caledonia's conforming amendment is filed, and, it is not yet known when that amendment can be filed since we must await a Commission public notice to trigger that filing.

In sum, as a result of the June 2 Order, there is still some uncertainty as to when the procedural guidelines for pending assignment and transfer applications requirements will begin to be enforced. Hence, Family urges the Presiding Judge not to reset the hearing date until and unless the Media Bureau dismisses or denies the Application. Setting a new hearing date now will serve no useful purpose since it cannot be predicted at this juncture when the Media Bureau will act on the Application based upon the foregoing.

Respectfully submitted,



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202-488-4505

June 23, 2003

Counsel for Family Broadcasting, Inc.



# NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

FOR IMMEDIATE RELEASE  
June 2, 2003

NEWS MEDIA CONTACTS:  
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## FCC SETS LIMITS ON MEDIA CONCENTRATION

### *Unprecedented Public Record Results in Enforceable and Balanced Broadcast Ownership Rules*

Washington, D.C. – The Federal Communications Commission (FCC) today adopted new broadcast ownership rules that are enforceable, based on empirical evidence and reflective of the current media marketplace. Today's action represents the most comprehensive review of media ownership regulation in the agency's history, spanning 20 months and encompassing a public record of more than 520,000 comments.

The FCC stated that its new limits on broadcast ownership are carefully balanced to protect diversity, localism, and competition in the American media system. The FCC concluded that these new broadcast ownership limits will foster a vibrant marketplace of ideas, promote vigorous competition, and ensure that broadcasters continue to serve the needs and interests of their local communities.

### *FCC Responds to Congressional and Court Directives*

In the 1996 Telecommunications Act, Congress mandated that the FCC review its broadcast ownership rules every two years to determine "whether any of such rules are necessary in the public interest as a *result of competition*." The Act requires the FCC to repeal or modify any regulation it determines to be no longer in the public interest. The FCC's decision today found that all of the broadcast ownership rules continue to serve the public interest either in their current form or in a modified form.

Recent court decisions reversing FCC ownership rules emphasized that any limits must be based on a solid factual record and must reflect changes in the media marketplace. In the *Fox v. FCC* decision, for example, the court said the FCC had "provided no analysis of the state of competition in the television industry" or even an explanation as to why the rule in question was necessary to either safeguard competition or enhance competition.

The *Report and Order* adopted today is based on a thorough assessment of the impact of ownership rules on promoting competition, diversity, and localism. This careful calibration of each rule reflects the FCC's determination to establish limits on broadcast ownership that will withstand future judicial scrutiny.

- more -

### ***New Limits Protect Viewpoint Diversity***

The FCC strongly affirmed its core value of limiting broadcast ownership to promote viewpoint diversity. The FCC stated that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." The FCC said multiple independent media owners are needed to ensure a robust exchange of news, information, and ideas among Americans.

The FCC developed a "Diversity Index" in order to permit a more sophisticated analysis of viewpoint diversity in this proceeding. The index is "consumer-centric" in that it is built on data about how Americans use different media to obtain news. Importantly, this data also enabled the FCC to establish local broadcast ownership rules that recognize significant differences in media availability in small versus large markets. The objective is to ensure that citizens in all areas of the country have a diverse array of media outlets available to them.

### ***New Rules Promote Competition and Choice for Americans***

The FCC affirmed its longstanding commitment to promoting competition by ensuring pro-competitive market structures. The FCC said it is clear that competition is a policy that is intimately tied to its public interest responsibilities and one that the FCC has a statutory obligation to pursue. The FCC said consumers receive greater choice and more innovative services in competitive markets than they do in markets where one or more firms exercise market power.

Although the primary concern of antitrust analysis is in ensuring economic efficiency through the operation of a competitive market structure, the FCC's public interest standard brings a closer focus to the American public. Thus, the FCC has a public interest responsibility to ensure that broadcasting markets remain competitive so that the benefits of competition, including lower prices, innovation and improved service are made available to Americans.

The FCC acknowledged that cable and satellite TV service compete with traditional over-the-air broadcasting. Today Americans enjoy a significant amount of choice for seeking news and information and thus the new rules limiting local and national TV ownership are designed to better reflect this additional competition. The FCC found that pro-competitive ownership limits must account for the fact that broadcast TV revenue relies exclusively on advertising; whereas cable and satellite TV service have both advertising and subscription revenue streams.

The FCC also explained that because viewpoint diversity is fostered when there are multiple independently owned media outlets, the FCC's competition-based limits on local radio and local TV ownership also advance the goal of promoting the widest dissemination of viewpoints.

### ***Localism Affirmed as Important Policy Goal***

The FCC strongly reaffirmed its goal of promoting localism through limits on ownership of broadcast outlets. Localism remains a bedrock principle that continues to benefit Americans in important ways. The FCC has sought to promote localism to the greatest extent possible through its broadcast ownership limits that are aligned with stations' incentives to serve the needs and interests of their local communities.

To analyze localism in broadcasting markets, the FCC relied on two measures: local stations' selection of programming that is responsive to local needs and interests, and local news quantity and quality. Program selection is an important function of broadcast television licensees and the record contains data on how different types of station owners perform. A second measure of localism is the quantity and quality of local news and public affairs programming by different types of television station owners. This data helped the FCC assess which ownership structures will ensure the strongest local focus by station owners to the needs of their communities.

### ***FCC Reiterates Importance of Promoting Minority and Female Ownership***

The FCC strongly reaffirmed its longstanding objective of encouraging greater ownership of broadcast stations by minorities and women. The FCC said this will benefit radio and television audiences by promoting greater diversity, innovation, and competition. The FCC furthered its objective of creating greater opportunities for new entrants in the broadcasting industry by carving out special transactional opportunities for small businesses, many of which are owned by minorities and women.

### ***Limits on Concentration Serve the Public Interest***

In sum, the modified ownership rules adopted today provide a new, comprehensive national and local regulatory framework that will serve the public interest by promoting competition, diversity and localism. Today's *Report and Order* adopts a set of cross-media limits to replace the newspaper/broadcast and radio/television cross-ownership rules; modifies the local television multiple ownership rule; strengthens the local radio ownership rule by modifying the local radio market definition; incrementally modifies the national television ownership rule; and retains the dual network rule. A summary of the broadcast ownership rules adopted today is attached.

The FCC also adopted a *Notice of Proposed Rulemaking* on defining non-Arbitron radio markets. Details are included in the attached summary.

Action by the Commission, June 2, 2003, by Report and Order (FCC 03-xxx) and Notice of Proposed Rulemaking (FCC 03-xxx).

-FCC-

MB Docket 02-277

MB Docket 03-xxx (NPRM)

Comments due: 30 days after publication in the Federal Register

Replies due: 45 days after publication in the Federal Register

Media Bureau contacts: Paul Gallant, Mania Baghdadi, Judith Herman at 202-418-7200.

News and information about the Federal Communications Commission and its media ownership limits can also be found on the FCC's web site [www.fcc.gov/ownership](http://www.fcc.gov/ownership).

## **FCC SETS LIMITS ON MEDIA CONCENTRATION**

*Summary of the Broadcast Ownership Rules adopted on June 2, 2003*

### **DUAL NETWORK OWNERSHIP PROHIBITION:** *(originally adopted 1946)*

The FCC retained its ban on mergers among any of the top four national broadcast networks.

#### ***Prohibition Promotes Competition and Localism***

The FCC determined that its existing dual network prohibition continues to be necessary to promote competition in the national television advertising and program acquisition markets. The rule also promotes localism by preserving the balance of negotiating power between networks and affiliates. If the rule was eliminated and two of the top four networks were to merge, affiliates of those two networks would have fewer networks to turn to for affiliation.

### **LOCAL TV MULTIPLE OWNERSHIP LIMIT:** *(originally adopted in 1964)*

The new rule states:

- In markets with five or more TV stations, a company may own two stations, but only one of these stations can be among the top four in ratings.
- In markets with 18 or more TV stations, a company can own three TV stations, but only one of these stations can be among the top four in ratings.
- In deciding how many stations are in the market, both commercial and non-commercial TV stations are counted.
- The FCC adopted a waiver process for markets with 11 or fewer TV stations in which two top-four stations seek to merge. The FCC will evaluate on a case-by-case basis whether such stations would better serve their local communities together rather than separately.

#### ***TV Limit Enhances Competition and Preserves Viewpoint Diversity***

The FCC determined that its prior local TV ownership rule could not be justified on diversity or competition grounds. The FCC found that Americans rely on a variety of media outlets, not just broadcast television, for news and information. In addition, the prior rule could not be justified as necessary to promote competition because it failed to reflect the significant competition now faced by local broadcasters from cable and satellite TV services. This is the first local TV ownership rule to acknowledge that competition.

The new rule permits local television combinations that are proven to enhance competition in local markets and to facilitate the transition to digital television through economic efficiencies. Finally, the new rule's continued ban on mergers among the top-four stations will have the effect of preserving viewpoint diversity in local markets. The record showed that the top four stations each typically produce an independent local newscast.

Because viewpoint diversity is fostered when there are multiple independently owned media outlets, the FCC's competition-based limits on local TV ownership also advance the goal of promoting the widest dissemination of viewpoints.

**LOCAL RADIO OWNERSHIP LIMIT:** (*originally adopted in 1941*):

The FCC found that the current limits on local radio ownership continue to be necessary in the public interest, but that the previous methodology for defining a radio market did not serve the public interest. The radio caps remain at the following levels:

- In markets with 45 or more radio stations, a company may own 8 stations, only 5 of which may be in one class, AM or FM.
- In markets with 30-44 radio stations, a company may own 7 stations, only 4 of which may be in one class, AM or FM.
- In markets with 15-29 radio stations, a company may own 6 stations, only 4 of which may be in one class, AM or FM.
- In markets with 14 or fewer radio stations, a company may own 5 stations, only 3 of which may be in one class, AM or FM.

***Radio Limit Promotes Competition and Viewpoint Diversity***

Although Americans rely on a wide variety of outlets in addition to radio for news, the FCC found that the current radio ownership limits continue to be needed to promote competition among local radio stations. Competitive radio markets ensure that local stations are responsive to local listener needs and tastes. By guaranteeing a substantial number of independent radio voices, this rule will also promote viewpoint diversity among local radio owners.

***Geographic Arbitron Markets Implemented***

The FCC replaced its signal contour method of defining local radio markets with a geographic market approach assigned by Arbitron. The FCC said that its signal contour method created anomalies in ownership of local radio stations that Congress could not have intended when it established the local radio ownership limits in 1996. The FCC closed that loophole by applying a more rational market definition than radio signal contours. The FCC said applying Arbitron's geographic markets method will better reflect the true markets in which radio stations compete.

- All radio stations licensed to communities in an Arbitron market are counted in the market as well as stations licensed to other markets but considered "home" to the market.
- Both commercial and noncommercial stations are counted in the market. The FCC determined that the current rule improperly ignores the impact that noncommercial stations can have on competition for listeners in radio markets.
- For non-Arbitron markets, the FCC will conduct a short-term rulemaking to define markets comparable to Arbitron markets. These new markets will be specifically designed to prevent any unreasonable aggregation of station ownership by any one company.
- As an interim procedure for non-Arbitron markets, the FCC will apply a modified contour method for counting the number of stations in the market. This modified contour approach minimizes the potential for additional anomalies to occur during this transition period, while providing the public a clear rule for determining the relevant radio markets.
- In using the contour-overlap market definition on an interim basis, the FCC made certain adjustments to minimize the more notorious anomalies of that system. Specifically, the FCC will exclude from the market any radio station whose transmitter site is more than 92 kilometers (58 miles) from the perimeter of the mutual overlap area. This will alleviate some of the gross distortions in market size that can occur when a large signal contour that is part of a proposed combination overlaps the contours of distant radio stations and thereby brings them into the market.





# PUBLIC NOTICE

Federal Communications Commission  
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Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

DA 03-1877  
June 2, 2003

## Media Bureau Announces Processing Guidelines For Broadcast Station Applications

Today the Commission adopted a *Report and Order* concerning new media ownership rules ("Order").<sup>1</sup> The *Order* includes processing guidelines to govern pending and new broadcast applications for the assignment or transfer of control of television and radio authorizations, as well as certain modification applications, during the transition period commencing with the adoption date of the *Order*. At the Commission's direction, the Media Bureau is issuing this Public Notice to announce the processing guidelines.

**New Applications.** The Commission has established a freeze on the filing of all radio and television transfer of control and assignment applications that require the use of FCC Form 314 or 315 ("New Applications"). We will revise application Forms 314 and 315 to reflect the new rules adopted in the *Order*. The freeze will be in effect starting with the *Order's* adoption date until notice has been published by the Commission in the *Federal Register* that OMB has approved the revised forms. Upon such publication, parties may file New Applications, but only if they demonstrate compliance with the new multiple ownership rules adopted in the *Order* or submit a complete and adequate showing that a waiver of the new rules is warranted. We will continue to allow the filing of short-form (FCC Form 316) applications at any time and will process them in due course.

**Pending Applications.** Applicants with long-form assignment or transfer of control applications (FCC Form 314 or 315) or with modification applications (FCC Form 301) that are pending as of adoption of the *Order* ("Pending Applications") may amend those Applications by submitting new multiple ownership showings to demonstrate compliance with the ownership rules adopted in the *Order* or by submitting a request for waiver of the new rules.<sup>2</sup> Parties may file such amendments once notice has been published by the Commission in the *Federal Register* that OMB has approved the information collection requirements contained in such amendments. Pending Applications that are still pending as of the effective date of the new rules will be processed under the new rules. Applications proposing *pro forma* assignments and transfers (FCC Form 316) will be processed in the normal course.

**Pending Petitions and Objections.** Petitions to deny and informal objections that were submitted

<sup>1</sup> *Report and Order* in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244 (adopted June 2, 2003).

<sup>2</sup> The Commission may determine that the nature of the amendment warrants a new public notice for the Pending Application.

to the Commission prior to the adoption date of the *Order* and that raise issues unrelated to competition against Pending Applications (as defined above) will be addressed with respect to those issues at the time we act on such Applications. Petitions and informal objections that were submitted to the Commission prior to the adoption date of the *Order* and that contest Pending Applications solely on grounds of competition pursuant to the interim policy<sup>3</sup> will be dismissed as moot.

Action by the Chief, Media Bureau. For further information, contact Peter H. Doyle or Nina Shafran of the Audio Division, Media Bureau, at (202) 418-2700, or Clay C. Pendarvis or Mary M. Fitzgerald of the Video Division, Media Bureau, at (202) 418-1600.

- FCC -

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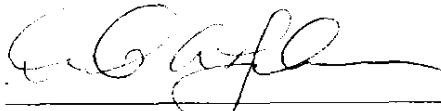
<sup>3</sup> See *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets*, 16 FCC Rcd 19861, 19894-97 ¶¶ 84-89 (2001). The Commission has terminated the interim policy with the adoption of the *Order* and, at the Commission's direction, we will no longer include the "flagging" language for radio sales applications that appear on public notice on or after the *Order*'s adoption date.

**CERTIFICATE OF SERVICE**

Daniel A. Huber, hereby certifies that on this 23<sup>rd</sup> day of June 2003, he sent by first class United States mail or by hand copies of the foregoing Status Report to:

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James Shook, Esquire\*  
Hillary S. DeNigro, Esquire\*  
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\*Via hand delivery